STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

THE ENERGY & TECHNOLOGY COMMITTEE

SENATE Bill 182: AAC REVISIONS TO THE UTILITY STATUTES

February 23, 2010

TESTIMONY OF CHAIRMAN KEVIN M. DELGOBBO

The DPUC supports the passage of this proposal. This proposal would make various changes to the Title 16 that would improve the agency's ability to perform its duties and advance the interests of the state's utility customers. It is also the Department's recommendations that SB 182, LCO 1032 sections 6-14, be stricken since the Department has moved away from defining and licensing brokers and replaced that proposal with a new proposal to better protect consumers and clarify agency relationships in the competitive electric supplier arena. The Department respectfully asks that the Committee take up that proposal for consideration in a subsequent hearing proceeding. The Department also notes that its proposal on uncontested procurement proceedings was omitted from LCO 1032 and would like that proposal to be set for reconsideration by this Committee as well. Concerning the current bill, this proposal would modify the provisions of Title 16 in the following manner:

1. Retention of Consultants for Federal Proceedings

Allows the DPUC to retain non-legal consultants to assist agency staff in proceedings before various federal agencies by providing expertise in areas where its staff lacks expertise or where the consultants are needed to supplement DPUC staff expertise.

Under current law, the provisions of Title 16 permit the DPUC to retain outside expert services to assist the agency in performing its statutory duties under a variety of circumstances. Most notably, the provisions of §16-18 allow the DPUC to retain the services of consultants to assist the agency in proceedings that the agency itself is conducting, and the provisions of §16-6a allow the DPUC, through the Attorney General's office, to obtain the services of outside legal counsel to appear in matters before certain specified federal agencies.

With the passage of the new Federal Energy Act and as a result of our ongoing experience in several recent federal proceedings, it has become apparent that a problematic gap exists in the current law which prevents the DPUC from directly retaining outside experts (non-legal) to assist the agency with its participation before federal proceedings. Absent this proposed change, if outside consulting services are required, the DPUC can only acquire such services through outside legal counsel that we have retained pursuant to §16-6a. With this proposed

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change, the DPUC believes that it will gain much needed administrative flexibility to when appropriate, directly retain outside technical expertise allowing the agency to secure these services on a more efficient and cost-effective basis.

2. Customer Interest on Security Deposits

Clarifies current law and current practices by adding references to Department of Banking at appropriate points in the statute that states the basis upon which interest on utility customer security deposits is to be calculated.

Currently, the provisions of 16-262(c) & (d) specify the standard by which interest on utility customer security deposits is to be calculated. In several locations in this section, the statutory provisions make alternative references to the Federal Reserve Bulletin and the CT Banking Commissioner as the basis for determining the appropriate interest rate. As a result of this fragmented statutory drafting, in looking to the statute for guidance on the matter utility customers and companies are frequently confused. The DPUC regularly receives utility customer and utility company inquires concerning the amount of interest that utilities pay on customer deposits. In accordance with current law, the DPUC relies upon the CT Banking Department's deposit index (information posted on Banking Department website) when questions arise about interest rate levels. Therefore, in the interest of eliminating this confusion the DPUC seeks to better clarify current law and current practices by adding references to the Department of Banking at appropriate points in the statute.

3. Utility Whistleblower Complaints

This proposal would extend the time period for the DPUC to make a preliminary finding on the validity of an employee's complaint that an employer has retaliated against an employee for reporting an employer's misconduct from 30 to 90 business days. By law, the DPUC must begin conducting a full investigation 30 days after making it preliminary determination, where an employer can rebut the presumption that its action was retaliatory. The law also specifies that the employee's return to his previous or comparable position must continue until the full investigation is complete.

Outline of Current Preliminary Finding Process

DPUC must notify employer within 5 business days of receiving the employee's complaint

DPUC to consider written response(s) submitted by the employer within 20 business days of receiving the notice

Both employer and employee, within this 20-day period can (1) submit rebuttal statements in the form of witness affidavits and supporting documents and (2)

meet with DPUC to discuss the charges; the DPUC may consider an employer's written response submitted after the 5 day deadline only for good cause shown.

DPUC must consider all of these written and verbal responses in making its preliminary decision as to whether the employer should be required to return the employee to his previous or comparable position.

As shown by timeline described above, and based upon its actual experience, the DPUC has found the current 30 day statutory window for making a preliminary finding to be grossly inadequate. In short, no meaningful or credible investigation into a complaint can be reasonably performed within the existing time period. In particular, as one can imagine, it is almost impossible to seek additional input from the employee and actually issue a preliminary determination in the last 5 days (after 20-day window for employer filings) in order to meet the current 30 day deadline. Therefore, to enhance the likelihood that employee interests (and also ratepayer interests) are not harmed by this unrealistic timeline, the DPUC seeks to extend the statutory deadline to issue a preliminary finding from 30 to 90 business days.

4. Denial of New Electric Service for Hardship Customers

Expands the provisions of the winter shutoff moratorium (for hardship electric customers) that currently prohibits utilities from terminating or refusing to reinstate electric customers to also prohibit utilities from denying hardship customers new electric service.

Under current law, a winter moratorium is annually in place from November 1st to May 1 st that prohibits an electric distribution, electric supplier, or a municipal electric utility from terminating or refusing to reinstate residential electric service in hardship cases where the customer lacks the financial resources to pay his/her entire account. This proposal would change the existing language of §16-262c(b)(1) which states, "terminate or refuse to reinstate" to instead read: "terminate, deny or refuse to reinstate." The DPUC is proposing this modification to address several complaints that it received from electric customers who moved into various service franchise areas during the winter shut off moratorium last year. In one particular case, a customer who possessed a certificate of serious illness from their doctor was denied electric service because the municipal electric utility sought a deposit before electric service would be initiated. This proposed change would offer an applicant for new electric service the same shutoff protection as an existing customer with a medical certificate, or an existing customer whose service was terminates and seeks reinstatement of service with a medical certificate.

5. Timing & Contents of Customer Rate Notices

Modifies current provisions that describe the timing and information to be provided by utility companies when they provide notice to their customers that they have filed an application with the DPUC to amend their rates.

Under current law, regulated utility companies are required to provide written notice to their customers of proposed rate increases by mail at least one week prior to the date that the DPUC holds its public hearings. However, the current statute does not in any manner prescribe how early in time the written notices can be provided to customers. Based upon our experience with several recent rate cases, the DPUC believes that the absence of a statutory limitation on how early notices are mailed to utility customers diminishes the statute's important policy objective of providing appropriate and timely notice to utility customers about upcoming public hearings. With this proposed change, the DPUC seeks to address the shortcomings in the current open-ended timing structure which frequently can result in customer notices being issued so far in advance of the public hearings that attendance and customer participation is not appropriately encouraged.

Moreover, there is no requirement that customer notices include important information like the date, time, and location of scheduled public hearings. This additional information can be provided to customers because the public hearing schedule is established in advance of the actual public hearings. This proposed change will assist customers by requiring that this important information be included on customer notices. As is currently the case, customers will also be able to contact the DPUC directly if they need more information about the public hearings.

Lastly, under current law, the wording of customer notices states that customers can obtain additional information about utility rate filings and the public hearing schedule by calling the DPUC. As a result of this written description, customers frequently call our Consumer Assistance Unit hoping to have their comments on company's rate filings made part of the DPUC's docket record. These customers are then frustrated to learn that legally in order for their comments to be included in the DPUC's docket record- their comments need to be filed in writing or made in person at a hearing of the particular rate case that they have a concern about. This proposed change will assist customers by requiring customer notices to clearly state the manner in which input can be appropriately provided to the DPUC for those customers who desire to participate in the DPUC's ratemaking process.

6-14. Definitions of electric supplier and aggregator

The Department recommends these provisions be stricken from Raised SB 182. The Department has replaced these provisions with a new proposal on electric supplier's code of conduct.

15. Appointment of Commissioners to serve on boards or councils in furtherance of State Objectives and the Public Interest

Would authorize the Chairman to appoint a designee of the DPUC to serve on boards as a director or member of a board established to fulfill Connecticut mandates on stated goals such as Climate Change or on other relevant state policy issues regarding utility regulation and the public interest.

While DPUC members serve on a variety of boards and councils, currently, there is an issue that without clear statutory authority, DPUC commissioners do not have the necessary legal protection to fully participate as directors in organizations such as the Regional Greenhouse Gas Initiative, Inc. Establishing clear statutory authority for members of the DPUC to participate and fully engage in such organizations within their expertise and jurisdiction would permit them to fulfill their duties on behalf of the State as members of these organizations and provide them with the authority to: enter into contracts with technical consultants, as necessary for special studies, advice and assistance; consult with and advise and exchange information with other departments or agencies of the state; and to serve in their official duties on matters that are crucial to the State of Connecticut such as Climate Change. Sec. 16-2 et seq. contain several provision prohibiting commissioners and DPUC employees from certain activities that would pose a conflict of interest to their official duties but no clear authority to engage in organizations that stem from their official duties or that the Governor has pronounced as important policy objectives for the State and which the DPUC maintains a significant role in.

16. Inclusion of methane gas by anaerobic digester system to the definition of Class 1 Renewables

This legislative proposal would make a minor modification to include the terms "anaerobic digester system" to the category of acceptable forms of "methane gas" that qualify as a Class 1 renewable energy source.

Conn. Gen. Stat. § 16-1 (a)(26) states in relevant part that, " Class I renewable energy source" means (A) energy derived from solar, wind power, fuel cell, methane gas from landfills, ocean thermal power...". However, methane gas may come from other sources besides landfills such as chicken or cow manure on farms, food waste collected but not deposited in a landfill or other organic residue. In its proceedings, the DPUC has found that there has been some uncertainty whether these other organic based forms of methane gas would qualify as a Class I energy source under the current regulatory framework.

As a result of the narrow definition of Class I as it relates to methane gas as being only those sources derived from landfills, the DPUC is restricted from including worthy projects which produce methane gas but are created by organic forms of methane gas in its determining of Class I projects. The Department

recognizes that anaerobic digester systems are a common method to capture the release of methane gas during the decay of organic material. Adding the words "or anaerobic digester systems" would make all methane projects derived from organic matter eligible. The DPUC believes this is a necessary clarification which will promote the growth of Class I renewables in our state and help us attain our RPS goals going forward. The intent is not to make natural gas eligible as a Class I energy renewable source.

17. Requirement that Class III Rec's be procured in any Supplier of Last Resort Procurement

This proposal would create a parallel requirement for supplier of last resort procurements similar to extant requirement for standard service.

An issue arose in the DPUC's Docket No. 08-09-15, Annual Review of Connecticut Electric Suppliers' and Electric Distribution Companies' Compliance with Connecticut Renewable Energy Portfolio Standards, in 2007, regarding whether an EDC is required to meet the Class III standard with respect to its Last Resort Service. Conn. Gen. Stat. §16-243q(a) provides, in relevant part: "On and after January 1, 2007, each electric distribution company providing standard service pursuant to section 16-244c...shall demonstrate...that not less than one per cent of the total output of...such standard service of an electric distribution company shall be obtained from Class III sources." (Emphasis added.)

In 2007, CL&P obtained Class III RECs for its Last Resort Service while UI did not. It might appear that the omission of Last Resort Service from Conn. Gen. Stat. §16-243q(a) was an oversight because Last Resort Service and Standard Service are both subject to Class I and II standards, *See* Conn. Gen. Stat. §16-245a(a). and there is no apparent reason for requiring Standard Service to meet the Class III standard while exempting Last Resort Service from the same requirement. Moreover, such exemption would interfere with the electric generation market in that it puts Supplier of Last Resort Service in an economically advantageous position for not having to incur the expense of Class III RECs.